

HUGHES TRANSPORTATION MANAGEMENT SYSTEMS

Interest: Hughes is the developer and manufacturer of an Automatic Vehicle Monitoring (AVM) system.

Specific Services:

- Local area AVM services, as contemplated by the AVM NPRM, should not be licenses subject to competitive bidding procedures. (3)

INDEPENDENT CELLULAR CONSULTANTS

Interest: Provides application filing assistance to eligible entities seeking the authorization of facilities in the FCC regulated radio services. Most recently, has assisted clients in the filing of IVDS applications.

Bidding Method:

- Oral bidding should not be used for IVDS licenses. (6)
- Sealed or electronically filed bidding permits access from remote locations. (6)

Sequence of Bidding:

- Competitive bidding should be accomplished in the IVDS by descending market order for each of the 734 IVDS markets.
- IVDS blocks within a single market should be auctioned separately, with the "A" block auction first. (7)

Payment Method:

- ICC urges the FCC to reconsider its tentative conclusion that full payment in lump sum of the winning bid be required for IVDS auctions. (7)
- The performance requirements that the NPRM proposes to impose on auction winners are unnecessary. (7-8)
- The FCC should consider dispensing with "up front" payments for IVDS markets on which small entrepreneurs may bid. (8)
- The FCC should consider that a market area with a population of 500,000 would still require an up front auction admission payment of \$5000. (8)
- Should the FCC determine that up front payments are required, ICC urges that the up front payment be credited to the winner's bid. (8)

Treatment of Designated Entities:

- ICC believes that the first step toward protecting the interests of small entrepreneurs is to create a truly meaningful "set aside" in the IVDS for small entrepreneurs. (5)
 - At least one of the 2 frequency blocks within each IVDS market should be reserved for small entrepreneurs. (5)
 - The FCC should give serious consideration to reserving both IVDS frequency blocks in markets below the top 100

for small entrepreneurs. (5)

- The definition of small entrepreneur offered by the SBA is adequate. (5)

Application Processing Requirements:

- Minor ownership changes should be permitted prior to the auction. (8)

Specific Services:

- ICC strongly opposes the FCC's tentative conclusion that the award of IVDS licenses for markets beyond the top nine markets already filed for should be subject to competitive bidding. (2)
- The FCC should consider instead that IVDS licensees may offer their service to the public in a format other than on a commercial subscriber basis, thus affording the FCC the discretion to utilize a lottery system as the means of awarding IVDS licenses. (2)
- ICC submits that, because there is not type-accepted IVDS equipment currently available (and hence no systems have yet been licensed), the FCC must wait until actual IVDS operations commence before determining whether or not the generation of commercial subscriber revenue is the "principal use" for IVDS. (3)

Other:

- Regardless of the auction methodologies and payment mechanisms selected for other radio services, ICC urges that the FCC regard the IVDS as appropriate spectrum where it can meet the statute's mandate to test alternative methodologies that the FCC might not select for larger radio services. (9)

INDEPENDENT CELLULAR NETWORK, INC.

Interest: Cellular carrier

Sequence of Bidding:

- The FCC should consider auctioning the set-aside blocks last to provide designated entities with a better idea of the values produced at auction and an opportunity to raise necessary funds. (pp. 4-5)

Payment Methods:

- The FCC should consider using the same type of deferred payment and interest term for mid-sized companies in order to accomplish parity with major telecommunications interests. (p. 4)

Treatment of Designated Entities:

- Agrees with Commissioner Barrett that "10 MHz slivers of spectrum" do not put small businesses on equal footing with the large players in the competitive market -- less spectrum means more capital must be put into facilities to provide the necessary coverage. (pp. 3-4)
- The SBIC standard for determining whether a business is small is too low for a telecommunications entity and would exclude many small MSA operators, RSA operators, independent telcos and rural cellular operators -- the ceiling should be raised to accommodate small and medium sized companies. (p. 4)

INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

Interest: Trade association of industrial radio users and FCC certified frequency coordinator in the private land mobile services.

Applicability of Competitive Bidding:

- The principal use of the frequency should dictate whether competitive bidding procedures should apply. (4)

Specific Services:

- Competitive bidding is not appropriate for most private land mobile services due to the absence of mutual exclusivity or paying subscribers. (3)
- Mutual exclusivity is not an issue on 800 MHz General category channels because of the presence of the frequency coordinators. (4)

INTERDIGITAL COMMUNICATIONS CORPORATION

Interest: Wireless technology manufacturer; developer of advanced BETRS technology

Specific Services:

- BETRS should not be subject to competitive bidding. (2)
 - BETRS is provided by monopoly telephone companies, and thus far has not been opened up by state regulatory commissions to competition; thus, there is no mutual exclusivity among applicants. (3)
 - Regarding the compensation criteria, the objective of telephone companies is to provide telephone service in the most efficient manner and not to receive compensation; most BETRS subscribers receive service below cost. (3)
 - BETRS is used to provide basic telephone service in rural areas where the cost of wire would be prohibitive. (3-4)
 - Acknowledges that BETRS applications could be mutually exclusive with paging applications; states that it would be bad public policy to permit the paging applicant (who has access to hundreds of channels) to buy the contested channel (of which there are only 26 channels allocated to BETRS) and deny access to the telephone network for rural customers of the telephone company. (5-6)

IOWA NETWORK SERVICES, INC.

Interest: Public utility providing centralized equal access, interexchange long distance telephone services, calling card service and enhanced voice messaging services

Treatment of Designated Entities:

- Legislative history supports FCC proposal to set aside 30 MHz for designated entities and the use of installment payment plans and tax certificates to foster participation by designated entities (7-11).
- "Rural telephone company" should be defined as a company whose local exchange serves places with populations of 10,000 or fewer persons (11-15).
- A telephone company should be able to qualify as a "small business" for purposes of a set-aside if it has 50,000 or fewer access lines and annual revenues from regulated telecommunications operations of less than \$40 million, or fewer than 1500 employees (15-17).
- Supports FCC proposal to allow consortium participation in PCS and recommends that consortia be credited on the basis of their constituent members rather than on the basis of their qualifications in the aggregate (17-18, 20).
 - Consortium applicants for blocks set aside for designated entities should be composed entirely of designated entities (18, 21).
 - Supports Commissioner Barrett's proposal that designated entities be allowed some sort of enhancement credit for bids on non-set-aside blocks to increase opportunities for their participation (18).
 - Rural and small telephone companies should be permitted to act in concert to bid upon set-aside blocks and to aggregate the two channels (18-20).
 - Rural telephone companies should be permitted to bid on set-aside spectrum outside of their own service areas (20-21).
- Only companies where women or minorities have a 50.1% or greater equity stake should be considered designated entities in these classes (21-23).

IVHS AMERICA

Interest:

- Non-profit educational research organization to promote the research, development and deployment of intelligent vehicle highway systems.

Specific Services:

- Pending further identification of the IVHS architecture, and noting that both non-commercial and commercial services may be performed over a single IVHS communications link, the FCC should retain discretion to decide at the appropriate time whether the use of competitive bidding to assign IVHS licenses will serve the public interest. (6,7)
- In considering the applicability of auctions, the FCC found that the eligibility of governmental entities for Interactive Video and Data Services licenses does not affect the pecuniary character of the service. Because IVHS implementation may also involve government involvement, the FCC should limit its findings regarding the participation of government entities to the Interactive Video and Data Service and reserve judgement on the issue in the IVHS context. (8,9)

JAJ CELLULAR

Interest: Cellular service provider

Specific Services:

- Submits that the 1988 Los Angeles, Phoenix and Minneapolis-St. Paul unserved area applications reinstated in the McElroy decision should not be included amongst those unserved area applications likely to be subject to competitive bidding. (pp. 1-4)
- Separating these applications from recently filed unserved area applications would be consistent with the D.C. Circuit Court of Appeals' remand order; would not thwart the FCC's objective of rapid delivery of service; and is consistent with Budget Act provisions allowing lotteries for applications accepted for filing before July 26, 1993 (pp. 4-6)

THOMAS J. JASIEN

Interest: Not indicated.

Specific Services:

- Competitive bidding should not be applied to cellular unserved areas licenses.

JMP TELECOM SYSTEMS, INC.

Interest: Not indicated.

Applicability of Competitive Bidding:

- Disagrees with exclusion of commercial broadcast television and radio. These license holders receive compensation for their services indirectly from advertisers. (5)

Bidding Methods:

- Opposes oral bidding, which JMP believes would handicap designated entities that may not be able to participate in auctions held in Washington. (4)
- Support allowing groups to bid on all MTA licenses to facilitate a nationwide PCS service. (4)

Payment Methods:

- Disagrees with the Commission's analysis concerning difficulties attendant with collection of royalties. If the Commission defines the royalty guidelines to be paid over time, applicants can perform cash flow analyses to determine whether it is feasible to conduct business before their applications are filed. (3)
- If upfront tender payments are required, the FCC should return the upfront payments of auction losers within 48 hours of the auction. (4)
- Substantial upfront nonrefundable filing fees should be imposed on applicants that are allowed to participate in designated entity lotteries. JMP recommends a nonrefundable filing fee of \$5,000.00 or more to deter speculation. (4)
- Proposal to have checks drawn from banks with assets of over one billion dollars may handicap entities with no such banks in their community. (6)
- FCC should establish short-term accounts for each bidder by buying Treasury bills to earn interest on the upfront tender payment. (6)

Treatment of Designated Entities:

- Agrees with proposals to give preferential treatment to designated groups if competitive bidding is used to award licenses. (2)

- 2 -

- To avoid unnecessary litigation over definition of terms such as "minority" or "small business," the Commission should award one set of market licenses for large firms via competitive bidding, and award a different set in the same market by lottery to designated entity applicants. The lottery winner would be required to pay over a span of fifteen years an amount equal to the lowest bid in the comparable market license auction. (3)

Safeguards:

- FCC should establish performance requirements before sale of licenses may occur, (6) and should clarify that cellular fill-in, LMDS, and IVDS licensees must fully construct their systems before they may be sold. (5)
- FCC should establish procedures to handle default payments. Suggests using guidelines established by the IRS. (5)
- To prevent collusion between bidders, recommends requiring bidders found guilty of collusion to be prohibited from future licensing for 5 years and that all existing licenses must be liquidated within 5 months, with proceeds to go to the Treasury. (6)

Application Processing Requirements:

- Agrees with proposal to use short form for initial filings. Suggests ineligibility of trusts. Supports disallowing modifications to an existing application in the manner stated in the Notice. (6)

Specific Services:

- Commission should grant permanent licenses to current or pending Experimental and Pioneer's Preference holders before auctions are applied to new services such as LMDS. (2)
- Disagrees with the proposal to apply competitive bidding to current and future applicants of wide area SMRs. Changes to the rules midstream in the licensing process will bestow an unfair market advantage on pre-existing licensing holders. (7)
- Agrees with the proposal to continue processing MMDS applications filed prior to July 26, 1993 via lottery. (7)

- FCC should issue LMDS applications accepted for filing and already placed on Public Notice via standards in existence before July 26, 1993. Exclusive LMDS market filings should be awarded similarly. If the Commission decides to award LMDS applications by competitive bidding, the auction process should be limited to pre-rulemaking market applicants. The Commission also must clarify why existing LMDS applications are being rejected without consideration. (7-8)
- FCC should grant cellular fill-in applications filed, accepted and placed on Public Notice before July 26, 1993, via rules in existence before that date. FCC should award exclusive applications forthwith. (8)

Other:

- The auction consultant hired by the Commission should be an entity with no direct or indirect conflicts in the telecommunications industry. (9)
- Should have a 120 day lead time of bid packages. (9)

ANDREA L. JOHNSON

Interest: Professor of Law at the California-Western School of Law.

Treatment of Designated Entities:

- Suggests using spectrum auction in conjunction with lotteries and incentives. Qualitative factors, such as submission of a Small Business Initiative Plan, would be evaluated before acceptance of bids. Credit awards would then be factored into bid. Incentives or enhancement credits could be given to consortia for MTA and BTA licensees that incorporate small business concerns. Lottery system would be used for ties. (p.4-7)

Specific Services:

- Opposes spectrum auctions for IVDS without considering Title III requirements that apply to all mass media communications; suggests separate rulemaking to consider spectrum auctions for IVDS. (p.2-4)

Other:

- Supports imposition of equal employment opportunity requirements on all licensees of new technologies under auction process. (p.7-8)
- Suggests contributing 10% of auction revenues toward a Communications Capital Fund to be used for telecommunications training, research and development grants and financial assistance for small and minority businesses. (p.8-9)

EDWARD M. JOHNSON

Interest: Not identified.

Treatment of Designated Entities:

- Favorable payment plans for designated entities will increase the basic bid price, and will not provide the relief required by Congress. (p. 2)
- If a designated entity could bid a percentage of the gross operating profit, the entity could use its capital resources to build and operate its system. (p.2)

Application Processing Requirements:

- Upfront payment proposed by Commission, which would require applicants to have \$100 Million cash in hand, will lead to collusion. Instead, \$10,000 flat refundable deposit should be required. (p.2)
- Imposition of filing fees, where the FCC will not have to process applications as it has traditionally done, may be an unlawful taking of property without just compensation. (p.3)

Interest: Not identified.

Specific Services:

- FCC should proceed as soon as possible with lottery for MAS licenses; substantial amount of time and money has been invested by those who have filed applications; FCC has moral/legal obligation to proceed with process.

ABRAHAM KYE, ET AL.

Interest: Applicants to provide cellular service in unserved areas.

Specific Services:

- Does not believe that Congress intended to give the FCC the discretion to use auctions to award mutually exclusive unserved area cellular applications accepted for filing before July 26, 1993. (2) Rather, Congress intended to grandfather these applicants under the mechanism in existence when the applications were filed. (3)
- Use of auctions for the above-mentioned applications would constitute improper retroactive rule making under the balancing test required pursuant to existing precedent. (4-5 and n.8)
- Specifically, retroactive enforcement is inappropriate in this instance because: (a) this is a matter of first impression (5); (b) the decision to adopt an auction-based mode of selection for previously-filed cellular applications represents a sharp break from a now stable Commission lottery methodology (5); (c) applicants had a high level of reliance on selection via lottery (6); (d) affected parties would be severely burdened by conversion to auctions (6); and (e) Congress did not intend to subject these applicants to auctions. (7)
- In the event that the Commission nevertheless decides to use auctions to select among previously filed cellular unserved area applicants, Lutz, et al. would favor limiting auction participation to those applicants already on file and would support the allowance of full market settlements prior to auction. (10)

WARD LEBER/EROCA DANIEL

Interest: Qualified members of a partnership that filed applications in the lottery for domestic public cellular telecommunication service for the unserved areas. (1)

Specific Services:

- FCC should not use competitive bidding with regard to applications already filed for cellular fill-in licenses. (1)

WILEY, REIN & FIELDING

LIBERTY CELLULAR, INC.

Interest: RSA cellular licensee; its 29 stockholders are rural independent local exchange carriers or their affiliates. Liberty is a prospective PCS applicant.

Sequence of Bidding:

- The FCC should auction all frequency blocks within a given MTA before proceeding to auction licenses in the next MTA. The blocks within an area should be auctioned on the same day. (8)

Combinatorial Bidding:

- Not opposed to sealed combinatorial bids for groups of MTA licenses. BTA licenses should not be awarded based on combinatorial bids. (2)

Payment Methods:

- At time short form application is filed, applicant should be required to submit a check for the upfront payment. FCC should deposit the checks into an interest bearing account. Dishonored checks should result in disqualification of applicant. (6)
- FCC should publish the exact amount required for the upfront payment when it announces the filing date. For BTAs, a flat fee for each license block should be specified. Payment should not vary according to the population and amount of spectrum in the block. (6)
- Upfront payment for unsuccessful bidders should be returned, but forfeited if an applicant who is the highest bidder fails to qualify for the license. (6)

Treatment of Designated Entities:

- Limitations on the eligibility of minority applicants, including women, should be adopted. A qualifying minority applicant should be required to certify that minorities, including women, with a principal place of residence in the area applied for as of the date of the public notice announcing the filing window for applications for the area control (with at least a 50.1% equity interest) such applicant. Further, the applicant should comply with the same financial limitations that are applicable to small businesses that qualify for preferential status. (4-5)
- The benefits of designated entity status should apply to all license blocks. Designated entities should be

permitted to benefit from flexible payment options. Designated entities should not be relieved of the need to submit to upfront deposits or to furnish a substantial payment following the bidding process. (5)

Safeguards:

The penalty of license forfeiture for licensees that do not meet the system construction benchmarks after five, seven and ten years is sufficient to assure that licensees will develop a workable technical proposal. (7)

Application Processing Requirements:

- Prior to bidding, all applicants should be required to submit a short form application, during a one-day filing window, to register to participate in PCS auctions. (5)
- The initial application should also document the applicant's financial ability to construct and operate at least a small PCS system. (6)
- Winning bidders should be required to supplement their applications with any amendments to the initial application. (7)
- For PCS applications, in particular, there is no need for a specific technical proposal. (7)

LIGHTCOM INTERNATIONAL, INC.

Interest: Minority-owned and controlled telecommunications company

Payment Methods:

- Endorses the concept of installment payments for designated groups and believes they should be available regardless of whether designated entities are bidding on a set-aside basis. (p. 2)
- Deferred payment plans should be available to designated groups when they bid for spectrum generally. (p. 2)
- Suggests that the FCC consider supporting programs to make capital available to minority-owned and women-owned businesses through existing financial institutions. (p. 2)

Treatment of Designated Entities:

- Urges the FCC to consider set-asides specifically for minority and women-owned businesses so that they will not have to compete with other small businesses. (p. 2)
- Recommends that the FCC adopt the proposal of the SBAC. (pp. 2-3)

Interest: LQSS is an applicant for an authorization to construct "Globalstar," a low-earth orbit satellite communications system using the MS/RDSS frequencies. (1)

Specific Services:

- Competitive bidding should not be used for licensing MSS/RDSS spectrum at 1610-1626.5 and 2483.5-2500 MHz, feederlink frequencies associated with MSS/RDSS systems, or for any spectrum reserved for future use of MSS/RDSS systems. (10)
- Congress has indicated that competitive bidding should not be used for assignment of MSS/RDSS licenses to use spectrum above 1 GHz if a method to avoid mutual exclusivity is available to the FCC. Several methods for avoiding mutual exclusivity are available. (4)
- Not only would it be contrary to the Act to require the MSS/RDSS applicants to prepare for a spectrum auction, but also it would destroy nearly three years' worth of negotiation and preparation by the applicants and the FCC staff for licensing multiple LEO systems. (5)
- The international features of LEO systems make an equitable auction difficult to design, jeopardize the integrity of any auction's results, potentially increase operating costs to bidders, and raise serious international concerns. (7)
- Statutory objectives would not be met by use of competitive bidding for this service. (7-8)

ROBERT LUTZ, ET AL.

Interest: Applicants to provide cellular service in unserved areas.

Specific Services:

- Does not believe that Congress intended to give the FCC the discretion to use auctions to award mutually exclusive unserved area cellular applications accepted for filing before July 26, 1993. (2) Rather, Congress intended to grandfather these applicants under the mechanism in existence when the applications were filed. (3)
- Use of auctions for the above-mentioned applications would constitute improper retroactive rule making under the balancing test required pursuant to existing precedent. (4-5 and n.8)
- Specifically, retroactive enforcement is inappropriate in this instance because: (a) this is a matter of first impression (5); (b) the decision to adopt an auction-based mode of selection for previously-filed cellular applications represents a sharp break from a now stable Commission lottery methodology (5); (c) applicants had a high level of reliance on selection via lottery (6); (d) affected parties would be severely burdened by conversion to auctions (6); and (e) Congress did not intend to subject these applicants to auctions. (7)
- In the event that the Commission nevertheless decides to use auctions to select among previously filed cellular unserved area applicants, Lutz, et al. would favor limiting auction participation to those applicants already on file and would support the allowance of full market settlements prior to auction. (10)

LUXCEL GROUP, INC.

Interest: Public company engaged in sale and resale of wireless communications services and the sale of telecommunication equipment.

Payment Methods:

- "Upfront payment" should not be so costly as to prohibit ability of small businesses to compete; proposes basing payment on flat fee of approximately \$250,000 for a 20 MHz block and \$125,000 for a 10 MHz block. (8)
- Commission should take necessary steps to open interest-bearing accounts for upfront payments. (8)

Treatment of Designated Entities:

- Supports adoption of Small Business Advisory Committee's (SBAC) recommendations regarding classification standards for small businesses; a small business should not be penalized for its success in raising capital to gain PCS licensure; opposes tying the definition of a small business to number of employees. (3)
- Supports incentives and preferential treatment measures advocated by the SBAC. (4)
- Tax incentives are a constructive way of encouraging small business participation in the deployment of PCS; incentives should be available to all parties that are "designated entities." (5)
- Tax certificate, deferred payment, and decreased upfront payments should be available to any qualified small business bidding on any block of spectrum, even if that spectrum is not set-aside specifically for designated entities; Commission should allow businesses that have \$25 million in net worth to be considered "small businesses." (6)
- Supports guidelines that treat SBA-chartered Small Business Investment Companies (SBICs) and Specialized Small Business Investment Companies (SSBICs) as bona fide financial institutions for reasonable assurance purposes. (7)
- Allowing qualified small businesses to self-certify their financial qualifications will increase the number of smaller entities that can participate in delivering PCS; certification could be accomplished through SSBIC

- 2 -

system or based on firm's funds or an investment bank commitment letter. (7)

- Supports allowing small businesses to pay for investments in spectrum through installment payments. (7)